

1
2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 IN RE: Bard IVC Filters Products Liability
10 Litigation,

No. MDL 15-02641-PHX-DGC

11 Lisa Hyde and Mark E. Hyde, a married
12 couple,

No. CV-16-00893-PHX-DGC

13 Plaintiff,

14 v.

ORDER

15 C. R. Bard, Inc., a New Jersey corporation;
16 and Bard Peripheral Vascular, Inc., an
17 Arizona corporation,

18 Defendants.

19 The parties have submitted deposition and trial excerpts for the Court's review.
20 This order includes the Court's ruling on objections contained in some of these excerpts.
21 The order will identify objections by the number of the transcript page on which they
22 appear. If more than one objection appears on a page, the order will either identify the
23 line on which the objection starts or, if the ruling is the same for all objections on the
24 page, will simply identify the page. Where an objection is sustained, the order will
25 identify the page and lines that should be omitted, but if no lines are identified, the
26 objection is sustained with respect to all designated testimony on that page. The Court
27 notes that some of the objections in these transcripts are very confusing, with multiple
28 colors, no indication of which party is making which objection, and some apparent

1 references to prior Court rulings without explanation. (Example – Sullivan page 62.)
2 The Court has done its best to understand what the parties are asserting on these pages,
3 and has no time for the parties to redo the submissions.

4 A. Dr. Kandarpa. The Court ruled at the final pretrial conference that Plaintiffs could
5 present non-opinion testimony from Dr. Kandarpa and opinion testimony admissible
6 under Rule 701, but could not present opinion testimony admissible under Rule 702
7 because they had never identified Dr. Kandarpa as an expert or made the disclosures
8 required by Rule 26(a)(2). The rulings below reflect the Court’s application of this
9 decision to Dr. Kandarpa’s testimony. When Dr. Kandarpa’s opinion appears to be based
10 primarily on his role as medical monitor of the Everest study, the Court has overruled the
11 objection. Where his opinion appears to be unrelated to the study and based on his
12 general expertise, the Court has sustained the objection.

- 13 1. 26 – overruled.
- 14 2. 28 – overruled.
- 15 3. 29 – overruled.
- 16 4. 33 – overruled.
- 17 5. 35 – overruled.
- 18 6. 47 – overruled.
- 19 7. 49:18 to 50:5 – sustained.
- 20 8. 51 – overruled.
- 21 9. 53 – overruled.
- 22 10. 55 – overruled.
- 23 11. 57 – overruled.
- 24 12. 58 – overruled.
- 25 13. 59 – overruled.
- 26 14. 60:4-16 – sustained.
- 27 15. 63 – sustained.
- 28 16. 66 – overruled.

- 1 17. 72 – overruled.
- 2 18. 73:16-22 – overruled.
- 3 19. 73:23 – overruled.
- 4 20. 74 – sustained.
- 5 21. 81 – overruled.
- 6 22. 95 – overruled.
- 7 23. 96 – overruled.
- 8 24. 98 – overruled.
- 9 25. 100:2 – overruled.
- 10 26. 100:8-22 – sustained.
- 11 27. 100:24 – overruled.
- 12 28. 101 – overruled.
- 13 29. 102 – overruled.
- 14 30. 103 – overruled.
- 15 31. 104 – overruled.
- 16 32. 105 – overruled.
- 17 33. 106 – overruled.
- 18 34. 107 – overruled.
- 19 35. 112 – overruled.
- 20 36. 115 – overruled.
- 21 37. 116 – overruled.
- 22 38. 117 – overruled.
- 23 39. 119 – overruled.
- 24 40. 122 – overruled.
- 25 41. 125 – overruled.
- 26 42. 126:1-15 – sustained.
- 27 43. 126:17 – overruled.
- 28 44. 128:1-12 – sustained.

- 1 45. 131:11 to 132:10 – sustained.
- 2 46. 133:3-15 – sustained.
- 3 47. 136 – overruled.
- 4 48. 137:9 – overruled.
- 5 49. 150 – overruled.
- 6 50. 151:9-20 – sustained.
- 7 51. 152 – overruled.
- 8 52. 169:2-12 – overruled.
- 9 53. 169:19 to 174:22 – overruled if Defendants can overcome the hearsay
- 10 objection (i.e., if the Everest study is admitted at trial).
- 11 54. 176 – overruled.
- 12 55. 181 – overruled.
- 13 56. 182:17 to 183:16 – overruled if Defendants can overcome the hearsay
- 14 objection.
- 15 57. 193 – overruled.
- 16 58. 196 – overruled (counsel made no objection to the leading question; this is
- 17 true of all leading objections that follow, unless noted).
- 18 59. 197:2 – overruled.
- 19 60. 197:13 – overruled.
- 20 61. 199 – overruled.
- 21 62. 200 – overruled.
- 22 63. 206 – overruled.
- 23 64. 208 – overruled.
- 24 65. 209 – overruled.
- 25 66. 210 – overruled.
- 26 67. 211 – overruled.
- 27 68. 212 – overruled.
- 28 69. 215 – overruled.

1 70. 217:12 to 218:3 – sustained, leading, objected to by defense counsel.

2 71. 218:23 to 2109:8 – sustained.

3 72. 219:16 to 220:2 – sustained.

4 73. 220:3-21 – overruled.

5 74. 224 – overruled.

6 75. 226 – overruled.

7 76. 231 – overruled.

8 B. Dr. Ciavarella.

9 1. 166 – no testimony designated.

10 2. 174-76 – no basis provided for the Court to rule on the 602 objection – the
11 parties did not include the portion of the deposition where the witness states
12 what he knows about the document. Overruled.

13 3. 175:10 – overruled.

14 4. 247:15- 23 – sustained.

15 5. 250:2-15 – sustained.

16 6. 293 – no basis for the Court to rule because the parties have not provided
17 context for this testimony. Overruled.

18 7. 294 – sustained. Rule 602.

19 8. 357:13-23 – sustained. Rule 402.

20 9. 358:2-25 – sustained. Rule 402.

21 10. 362:17 to 363:16 – sustained. Rule 402.

22 C. Dr. Trerotola.

23 1. 19:7-14 – sustained. Rule 402.

24 2. 22:24 to 23:22 – sustained. Rule 402.

25 3. 27 – overruled.

26 4. 31:17-24 – sustained. Rule 402.

27 5. 77 – overruled.

28 6. 80 – overruled.

- 1 7. 93 – overruled.
- 2 8. 94 – overruled.
- 3 9. 99:4-7 – sustained. No question designated.
- 4 10. 105 – overruled.
- 5 11. 109 – overruled.
- 6 12. 119 – overruled.
- 7 13. 127-29 – overruled.
- 8 14. 134 – overruled.
- 9 15. 135 – overruled.
- 10 16. 177 – overruled.
- 11 17. 178-79 – overruled.
- 12 D. Dr. Brauer.
- 13 1. 242 – overruled.
- 14 2. 262 – sustained.
- 15 3. 356-57 – sustained.
- 16 4. 358-59 – sustained.
- 17 5. 360:17 to 361:13 – sustained.
- 18 E. Jack Sullivan.
- 19 1. 62:14 to 63:1 – sustained. Rule 402.
- 20 2. 64:20 to 65:1 – sustained, Rule 402.
- 21 3. 64:17-22 – sustained. Rule 402.
- 22 4. 83:23 to 84:18 – sustained. Rule 402.
- 23 5. 85:25 to 86:2 – sustained. Rule 402.
- 24 6. 92, 251 – overruled. If Defendants are going to present evidence of
- 25 warnings to doctors as part of their design defect defense, Plaintiffs may
- 26 present evidence to show the warnings were incomplete or inaccurate.
- 27 7. 265-66 – sustained. Rule 402.
- 28 8. 317-18 – sustained. Rule 402.

- 1 9. 354:5-16 – sustained. Rule 402.
- 2 10. 434:6 to 435:4 – sustained. Rule 402.
- 3 11. 448:18-25 – sustained. Rule 402.
- 4 12. 450 – overruled.
- 5 13. 457:13-25 – sustained. Rule 602.
- 6 14. 458:13 to 459:23 – sustained. Rule 602.
- 7 15. 461 – sustained. Rule 602.
- 8 16. 462:15-18 – sustained. Rule 402.
- 9 17. 463 – overruled.
- 10 18. 464:18 to 465:15 – sustained. Rule 602.
- 11 19. 465:14 to 466:4 – sustained. Rule 602.
- 12 20. 466:14-22 – sustained. Rule 402.
- 13 21. 467 – overruled.
- 14 22. 468 – overruled.
- 15 23. 535:10 – overruled.
- 16 24. 525:22 – overruled.
- 17 25. 526-27 – overruled.
- 18 26. 528 – overruled.
- 19 27. 533 – overruled.
- 20 28. 535 – sustained.
- 21 29. 536:9-25 – sustained. Rule 402.
- 22 30. 537:25 to 539:4 – sustained. Rule 402.
- 23 F. Robert Cortelezzi.
- 24 1. 66:19 to 67:18 – sustained. Rule 402.
- 25 2. 260 – overruled.
- 26 3. 264 – sustained. Rule 402.
- 27 4. 308:6 – overruled.
- 28 5. 308:17 – sustained. Rule 402.

- 1 6. 349 – overruled.
- 2 7. 367-68 – overruled.
- 3 G. Len DeCant.
- 4 1. 287 – sustained. Rule 402.
- 5 2. 304:10-17 – sustained. Rule 402.
- 6 H. Robert Ferrara.
- 7 1. 100 – no testimony designated.
- 8 2. 103:16 to 104:11 – sustained.
- 9 3. 104:12-24 – sustained. Rule 402.
- 10 4. 111:6-22 – sustained. Rule 402.
- 11 5. 113 – overruled.
- 12 6. 116:9-24 – sustained. Rule 402.
- 13 7. 117 – sustained. Rule 402.
- 14 8. 121:20 to 122:11 – sustained. Rule 402.
- 15 9. 231:22 to 232:16 – sustained. Rule 602.
- 16 10. 233 – sustained. Rule 402.
- 17 11. 249 – overruled.
- 18 12. 250 – overruled.
- 19 13. 251 – overruled.
- 20 14. 281 – sustained. No answer designated.
- 21 15. 291:2 to 293:1 – sustained. Rule 402.
- 22 I. Natalie Wong.
- 23 1. 34:1 – overruled.
- 24 2. 34:20 to 35:6 – sustained. Rule 602.
- 25 3. 35:13 – overruled.
- 26 4. 120 – overruled.
- 27 5. 121 – sustained. No question designated.

28

1 J. Dr. Moritz.

2 1. 101 – sustained.

3 2. 114 – overruled.

4 3. 123 – overruled.

5 4. 129 – overruled.

6 5. 137 – sustained.

7 6. 205 – overruled.

8 7. 207 – overruled.

9 K. Douglas Uelmen.

10 1. 64-65 – sustained.

11 2. 67 – Plaintiffs’ objection overruled. Bard objects, but also states that it is
12 including for completeness. ?

13 3. 68 – sustained. Rule 402.

14 4. 325 – overruled. The Court has precluded evidence regarding Recovery
15 cephalad migration deaths, not all references to death as a risk of filter
16 migration.

17 5. 326:20 to 327:2 – sustained.

18 6. 327-28 – overruled.

19 7. 329:5 to 330:3 – sustained.

20 8. 332 – overruled.

21 9. 333 – overruled.

22 10. 367-68 – overruled.

23 11. 387-88 – overruled.

24 12. 389:2-13 – should be excluded consistent with ruling on Recovery
25 migration deaths.

26 L. Brian Hudson.

27 1. 137 – overruled.

28 2. 153 – no answer designated.

7. 289 – overruled.

4. 201-02 – sustained.

6. 349 – sustained. Rule 402.

4. 174-75 – overruled.

Dated this 12th day of September, 2018.

- 10 -